

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

MAY 29 2009

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,

Petitioner,

v.

HON. DEBORAH BERNINI, Judge of
the Superior Court of the State of
Arizona, in and for the County of Pima,

Respondent,

and

DANIEL WILLIAM RITZ,

Real Party in Interest.

2 CA-SA 2009-0029

DEPARTMENT B

DECISION ORDER

SPECIAL ACTION PROCEEDING

Pima County Cause No. CR-20090720

JURISDICTION ACCEPTED; RELIEF GRANTED

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Marana
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By Richard C. Bock

Tucson
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¶1 In this special action, the State of Arizona challenges the respondent judge's order affirming Marana Municipal Court Magistrate Charles Davies's dismissal of the charges against real party in interest Daniel Ritz for driving under the influence of an intoxicant (DUI) and driving with an alcohol concentration of .08 or greater. *See* A.R.S. § 28-1381(A)(1), (2). This matter originated in Marana Municipal Court and, having appealed Judge Davies's ruling to the superior court, the state has no remedy by appeal to this court. *See* A.R.S. § 22-375; *see also State v. Hantman*, 204 Ariz. 593, ¶ 2, 65 P.3d 974, 975 (App. 2003). For that reason, and because we find the respondent has abused her discretion, we accept jurisdiction of this special action and grant relief. *See* Ariz. R. P. Spec. Actions 1(a) and 3(c).

¶2 The record provided us establishes Ritz was stopped after a Marana police officer observed him commit two traffic violations: an improper left turn, in violation of A.R.S. § 28-751(2), and speeding, in violation of A.R.S. § 28-701(A). Based on a number of observations, the officer then investigated Ritz for DUI, conducted a variety of tests, and ultimately arrested him. Ritz filed in the municipal court a brief motion to dismiss the charges, suggesting the officer had neither reasonable suspicion to stop Ritz's vehicle nor probable cause to arrest him for DUI. Following an evidentiary hearing, Judge Davies found that the officer had had reasonable suspicion to stop Ritz's car, based on the traffic violations the officer had observed. But, after taking the issue of probable cause under advisement,

Judge Davies found the officer had lacked probable cause to arrest Ritz and dismissed the DUI charges.

¶3 On appeal to the superior court, the state argued Judge Davies had erred in finding the officer did not have probable cause to arrest Ritz for DUI. The respondent judge appears to have misunderstood both the state’s argument on appeal and Judge Davies’s ruling. The respondent judge stated in her order that Judge Davies “[i]nexplicably . . . did not grant the motion challenging reasonable suspicion, but did grant dismissal based upon lack of probable cause pertaining to the original stop.” Respondent then correctly points out that, to stop a vehicle, an officer needs only reasonable suspicion, not probable cause, to believe an offense has been committed. *See State v. Graciano*, 134 Ariz. 35, 37, 653 P.2d 683, 685 (1982) (officer may only stop vehicle if totality of circumstances “raise[s] a justifiable suspicion that the particular individual to be detained is involved in criminal activity”) (emphasis removed). Reasonable suspicion for investigatory purposes “falls short of the probable cause required for an arrest.” *State v. Fornof*, 218 Ariz. 74, ¶ 5, 179 P.3d 954, 956 (App. 2008). And, a traffic violation does provide reasonable suspicion for a vehicular stop. *State v. Acosta*, 166 Ariz. 254, 257, 801 P.2d 489, 492 (App. 1990). Apparently believing Judge Davies had dismissed the charges based on lack of probable cause supporting the stop, the respondent judge determined it was therefore her obligation to determine de novo whether there had been sufficient evidence of reasonable suspicion to support the stop.

¶4 Because the respondent judge misunderstood the basis for Judge Davies’s ruling, her evaluation of the record was inherently flawed. She reevaluated the evidence in light of what she viewed as the correct legal standard, while claiming to defer to Judge Davies with respect to his factual findings. The respondent concluded, “[T]he traffic stop of the Defendant was not based upon reasonable suspicion and therefore the dismissal of his charges was a proper exercise of discretion.”

¶5 First, Judge Davies did apply the correct legal standard in evaluating the propriety of the stop, finding the officer had reasonable suspicion based on the traffic violations he had observed. Both the respondent judge and this court must defer to Judge Davies with respect to any factual finding he made. *See State v. Rogers*, 186 Ariz. 508, 510, 924 P.2d 1027, 1029 (1996) (reviewing court upholds any factual findings trial court made absent abuse of discretion; whether, deferring to trial court on facts, police had reasonable suspicion to conduct investigatory stop is question of law reviewed de novo). The record amply supports his finding that the officer had reasonable suspicion to stop Ritz’s vehicle. Although the respondent judge claimed she was deferring to Judge Davies with respect to his factual findings, in actuality, possibly because of the flawed premise that Judge Davies had applied an incorrect legal standard, she appears to have reweighed the evidence. She apparently reached the conclusion she did by reassessing the evidence presented at the evidentiary hearing, rather than deferring to the factual findings Judge Davies had made. The record belies her conclusion there was insufficient evidence to support Judge Davies’s finding that the officer had reasonable suspicion to stop Ritz.

¶6 More importantly, it is clear Judge Davies only granted Ritz’s motion insofar as it related to Ritz’s claim the officer had lacked probable cause to arrest him for DUI. The respondent judge appears to have believed the state was asserting on appeal that the officer had “more than sufficient probable cause to conduct his investigation” after stopping Ritz. This mischaracterizes the state’s argument. It argued instead that Judge Davies had erred in finding that, after observing the traffic violations, stopping Ritz’s vehicle, and conducting a further investigation, the officer lacked probable cause to arrest Ritz. Because the respondent judge has not addressed that issue, instead misinterpreting and reversing the lower court’s factual findings and legal conclusions regarding the propriety of the initial stop, she has abused her discretion. *See State v. Wall*, 212 Ariz. 1, ¶ 12, 126 P.3d 148, 150 (2006) (abuse of discretion includes “[a]n error of law committed in reaching a discretionary conclusion”); *City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, ¶ 64, 181 P.3d 219, 237 (App. 2008) (same).

¶7 Based on the foregoing, we grant special action relief and remand this matter to the respondent judge for further proceedings consistent with this decision.¹

J. WILLIAM BRAMMER, JR., Judge

Presiding Judge Eckerstrom and Judge Vásquez concurring.

¹The state complains in its petition for special action that, although it had requested oral argument on appeal pursuant to Rule 11(a), Ariz. Super. Ct. R. App. P.—Crim., which requires the court to grant oral argument when requested, the respondent judge ruled without holding such a hearing. A hearing, if requested, would be part of such proceedings.